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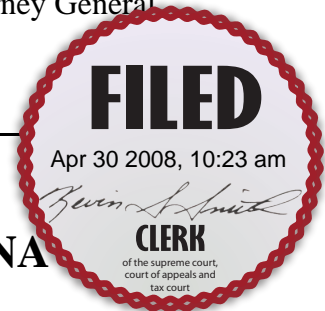
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**IN THE
COURT OF APPEALS OF INDIANA**



CHRISTOPHER GIBBS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 89A01-0710-CR-463

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable P. Thomas Snow, Judge
Cause No. 89D01-0609-FD-129

April 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Christopher Gibbs challenges his sentence for class D felony theft. We affirm.

Issue

The issue is whether the trial court abused its discretion in sentencing Gibbs to the one-and-one-half-year advisory sentence.

Facts and Procedural History

In early September 2006, Gibbs, age twenty, entered a Wal-Mart store in Richmond in violation of a no-trespass order. Once inside, Gibbs removed his coat and hung it on a hanger, leaving his business cardholder and some paperwork in the pocket. He put on a new suit coat and walked out of the store without paying for it. A Wal-Mart security officer found Gibbs's identification and contacted Gibbs, who returned to Wal-Mart and admitted to switching the coats.

The State charged Gibbs with class D felony theft. Gibbs pled guilty. On September 4, 2007, the trial court issued the following sentencing statement:

- A. The defendant has accumulated a significant juvenile and adult criminal record during the short span of his life. The present theft represents the defendant's third such offense over a relatively short span of time. Additionally, it is noted that the defendant received No Trespass Order from Walt-Mart [sic] due to past problems with said entity. In spite of the No Trespass Order, the defendant committed this crime. The court notes that the defendant's past exposure to the criminal justice system has resulted in lenient sentences with some or all of the previously ordered jail time suspended. It is clearly and convincingly obvious to this court that the defendant should suffer a consequence for his continued illegal activity.
- B. The defendant, through counsel, urged the court to consider mitigating circumstances in these proceedings, including the relatively insignificant nature of this criminal activity, the defendant's youthful age, his family situation, and his express[ion] of remorse. While noting the possible

existence of these mitigators, the court finds that when balanced against the overwhelming presence of the aggravating circumstances of the defendant's criminal record, as set forth above, the advisory sentence of one and one-half (1-1/2) years, is more than fair to the defendant in these proceedings. Additionally, the court notes that the State of Indiana has requested that said one and one-half (1-1/2) years be served with no time suspended. In this regard, the court is inclined to allow the defendant to serve only a small portion of the advisory sentence and be placed on probation where he can show the court and society that he can, in fact, succeed.

Appellant's App. at 42-43. Gibbs appeals his sentence.

Discussion and Decision

Gibbs argues that the court failed to give adequate consideration to his remorse and guilty plea. Although he invokes Indiana Appellate Rule 7(B), these arguments are more properly analyzed under the abuse of discretion standard. Sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. *Id.* "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.* (citation and quotation marks omitted). One way in which the trial court may abuse its discretion is when the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration. *Id.* at 490-91.

To the extent that Gibbs contends that the trial court failed to give adequate weight to his remorse, we note that "[b]ecause the trial court no longer has an obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence ... [it] may

not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.” *Anglemyer*, 868 N.E.2d at 491. The trial court noted at the guilty plea hearing, “You expressed remorse. I take that as true. However, there is always that fine line that individuals walk on in this court of being sorry [for] committing the crime vs[.] being sorry for getting caught. But, I will give you some credit for remorse.” Tr. at 24. As the record makes it clear that the trial court considered Gibbs’s remorse, it was not obligated to weigh it when determining his sentence.

Gibbs also contends that the trial court failed to give any consideration to his guilty plea. Gibbs asks that we deem his guilty plea a substantial benefit to the State worthy of a reciprocal benefit in the form of a lesser sentence. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007). “[A] guilty plea does not automatically amount to a significant mitigating factor.” *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*. For example, a guilty plea is not a significant mitigator where the evidence against the defendant is such that the decision to plead guilty is merely pragmatic. *Id.* When Gibbs switched the coats, he literally left his calling card. Given the strength of the evidence against him, we find no abuse of discretion here.

Gibbs also asserts that his character and the “minor nature” of his offense render his sentence inappropriate. Appellant’s Br. at 4. “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” App. R. 7(B). “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” *Anglemyer*, 868 N.E.2d at 494.

The trial court referenced Gibbs's youthful age and the relatively low monetary value of the item stolen, but also stated that Gibbs had been a "frequent flyer in the adult criminal justice system." Tr. at 23. In suspending one year of his sentence to probation, the court noted a desire to "hopefully strike a balance that will allow you to suffer a consequence for your felonious behavior and yet give you some signal that I haven't given up on you yet." *Id.* at 24. Finally, when addressing the six months to be executed, the trial court referenced Gibbs's past lenient sentencing and its likely effect on his continued thievery. Appellant's App. at 43. Gibbs has demonstrated an unwillingness to keep his hands off of other people's property, and the trial court determined that an appropriate level of leniency would involve a period of incarceration. Gibbs's sentence was not inappropriate.

To the extent that Gibbs argues that he is entitled to have his conviction lowered from a class D felony to a class A misdemeanor, we note that Indiana Code Section 35-50-2-7(b) is discretionary. "[I]f a person has committed a Class D felony, the court *may* enter judgment of conviction of a Class A misdemeanor and sentence accordingly." *Id.* (emphasis added.) "The legislature made theft a felony and gave the trial court discretion to treat the crime as a misdemeanor." *Taylor v. State*, 511 N.E.2d 1036, 1041 (Ind. Ct. App. 1987). Here, as in *Taylor*, Gibbs's prior criminal activity suggested that leniency would have been inappropriate. The trial court did not abuse its discretion in declining to reduce Gibbs's theft conviction from felony to misdemeanor status.

Affirmed.

BARNES, J., and BRADFORD, J., concur.